
**APPEALS BOARD
UTAH LABOR COMMISSION**

WILLIAM MARK POULSON,

Petitioner,

vs.

**WILLEY MOTORS, INC. and
EMPLOYERS COMPENSATION
INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-1090

Willey Motors, Inc. and its insurance carrier, the Employers Compensation Company, (referred to jointly as "Willey Motors") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to William Mark Poulson under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Poulson claims workers' compensation benefits from Willey Motors for a work injury to his back on September 1, 2005. After holding an evidentiary hearing, Judge Lima found that even if Mr. Poulson had a preexisting condition that contributed to his work injury, he would have satisfied the more stringent test for legal causation. Accordingly, Judge Lima awarded benefits.

In its motion for review, Willey Motors disputes Judge Lima's finding that the exertion involved was unusual or extraordinary to satisfy the more stringent test for legal causation.

FINDINGS OF FACT

The following facts are relevant to the issue raised in Willey Motors' motion for review:

On September 1, 2005, Mr. Poulson was attempting to lift a 29-pound manifold from a pick-up truck engine. In order to access the manifold, Mr. Poulson's body was stretched over the front of the truck and he had to reach forward over the radiator to the manifold. As he lifted the manifold up, it caught on the fuel injector lines. As he continued to lift and jerk the manifold free, he injured his back. Dr. Workman treated Mr. Poulson and assessed herniated discs at the L3-4 level caused by the work accident. Dr. Workman concluded that Mr. Poulson did not have a preexisting condition that was aggravated by the work injury because he had not experienced any prior problems at the L3-4

ORDER AFFIRMING ALJ'S DECISION
WILLIAM MARK POULSON
PAGE 2 OF 3

level and an MRI taken in 2001 showed this level as normal. Dr. Workman performed surgery at the L3-4 level.

At Willey Motors' request, Dr. Knoebel conducted a medical records review and expressed the following opinion:

To a reasonable degree of medical probability, the 9/1/05 incident . . . was the initiating and significant event in regards to his low back pain and subsequently diagnosed left L3/4 disc herniation. . . .

Reasonably the patient has significant disc degeneration at multiple levels and this makes him prone for disc herniations. His prior lumbar spine injuries and surgeries did not reasonably or significantly predispose him to the L3/4 disc herniation of 9/1/05, however.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits under the foregoing standard, an injured worker must establish his or her work was the "medical cause" and "legal cause" of the injury. See Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is explained in Price River Coal Co. v. Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986):

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life."

Nevertheless, not every pre-existing condition will trigger application of the more stringent "unusual or extraordinary exertion" test for legal causation. As the Utah Court of Appeals stated in Nyrehn v. Industrial Commission, 800 P. 2d 300, 334 (Utah App. 1990) (emphasis added):

[The Commission] may not simply presume that the finding of a preexisting condition warrants application of the Allen test. **An employer must prove medically** that the claimant "suffers from a preexisting condition which **contributes** to the injury." (Citations omitted; emphasis added.)

In this case, Judge Lima found that the medical opinions of Drs. Workman and Knoebel

ORDER AFFIRMING ALJ'S DECISION
WILLIAM MARK POULSON
PAGE 3 OF 3

conflicted as to whether Mr. Poulson suffered from a preexisting condition that contributed to his back condition. Such a medical conflict would generally require referral to a medical panel; however, Judge Lima determined that such a referral was unnecessary because, even if the more stringent legal causation test applied, Mr. Poulson's exertion satisfied that test. The Appeals Board agrees. The manifold itself weighed 29 pounds, and additional force was necessary to free the manifold. These factors, combined with Mr. Poulson's awkward position as he worked, increased the level of exertion to an unusual or extraordinary exertion.

As an aside, the Appeals Board notes that the burden is on the employer to prove that the employee has a contributing preexisting condition. The Appeals Board is not convinced that Willey Motors submitted sufficient evidence to raise this issue or to warrant referral to a medical panel.

In summary, the Appeals Board concurs with Judge Lima's finding that Mr. Poulson satisfied the more stringent Allen test for legal causation. The Appeals Board therefore concludes that Mr. Poulson's work injury is compensable and affirms Judge Lima's order for benefits.

ORDER

The Appeals Board affirms Judge Lima's decision for benefits. It is so ordered.

Dated this 16th day of December, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.